91-862

No. 91-____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1991

STATE OF MINNESOTA,

Petitioner,

vs.

KATHLEEN RITA MCKOWN,
and WILLIAM LISLE MCKOWN,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

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QUESTIONS PRESENTED

1. An eleven-year-old child's Christian Science parents (mother and step-father) treat the child, who develops diabetes, with prayer rather than conventional medical care, and the child dies. After being indicted for Manslaughter, the Hennepin County District Court dismisses the indictments based upon the prayer exemption in the child neglect statute's applying to the manslaughter statute. The Minnesota Court of Appeals affirms the dismissal holding that, although the statutes are not *in pari materia*, due process is violated by their "interplay." The Minnesota Supreme Court affirms on September 20, 1991, holding that the statutes are not *in pari materia* but, based upon federal standards, due process (fair notice) rights of the parents would be violated by prosecuting them for manslaughter. Did the Minnesota Supreme Court misinterpret federal standards of due process in so holding?

2. Did the Minnesota Supreme Court's affirmance of the dismissal of the indictments have the practical effect of allowing the parents' practice of religion to supersede the child's right to life?

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STATE OF MINNESOTA,

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vs.

KATHLEEN RITA MCKOWN,
and WILLIAM LISLE MCKOWN,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

The Hennepin County Attorney, on behalf of the State of Minnesota, respectfully petitions for a writ of certiorari to review the judgment of the Minnesota Supreme Court entered in this proceeding on September 20, 1991.

OPINIONS BELOW

The slip opinion of the Minnesota Supreme Court is reproduced and attached to this Petition as Appendix A. The slip opinion of the Minnesota Court of Appeals is reproduced as Appendix B. The opinion of the Hennepin County District Court, reproduced and attached to this Petition as Appendix C, is unreported.

STATEMENT OF JURISDICTIONAL GROUNDS

The judgment of the Minnesota Supreme Court was entered on September 20, 1991. This petition for a writ of certiorari was filed within ninety days of the Minnesota Supreme Court's decision.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a) (1989).

CONSTITUTIONAL PROVISIONS

The Due Process Clause of the Fourteenth Amendment to the United States Constitution:

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . ."

STATUTORY PROVISIONS

Minnesota Statute §609.378 (1988):

(a) A parent, legal guardian, or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and which deprivation substantially harms the child's physical or emotional health, * * * is guilty of neglect of a child and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both.

* * *

If a parent, guardian, or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment shall constitute "health care" as used in clause (a).

Minnesota Statute §609.205 (1988):

[A] person who causes the death of another by any of the following means is guilty of manslaughter in the second degree and may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than $14,000, or both:

(1) by the person's culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another * * *.

STATEMENT OF THE CASE

On May 9, 1989, 11-year-old Ian Lundman died at his home in Independence, Minnesota. Ian's death was apparently caused by diabetic ketoacidosis, a complication of diabetes mellitus. Ian was occasionally ill in the weeks preceding his death and became seriously ill two or three days before he died.

Kathleen McKown, Ian's mother, and William McKown, Ian's step-father, are Christian Scientists. In accord with their religious beliefs, Ian was treated with Christian Science spiritual healing methods throughout his final illness. He did not receive conventional medical care at any time during that illness.

In late September and early October, 1989, the Hennepin County Attorney presented evidence related to Ian Lundman's illness and death to the Hennepin County Grand Jury. The grand jurors heard testimony from medical doctors indicating that Ian's diabetes was apparently treatable through conventional medicine and that his condition probably could have been stabilized as late as two hours before he died. The jurors also heard testimony regarding the nature and practice of Christian Science healing, and regarding the specific healing methods used in treating Ian Lundman.

* * *

The McKowns moved the District Court for the Fourth Judicial District, the Honorable Eugene J. Farrell presiding, to dismiss the indictments against them for lack of probable cause, because the indictments violated due process of law and their rights to freely exercise their religious beliefs, and because the grand jury was improperly instructed with respect to the McKown's duty of

care. The district court dismissed the indictments. It concluded that the child neglect statute and the second degree manslaughter statute were *in pari materia*, such that the spiritual treatment and prayer exception to the child neglect statute also operated as a defense to the charge of second degree manslaughter. The court determined that the McKown's rights had been prejudiced because the grand jury was not instructed as to the effect of the spiritual healing and prayer exception. It also concluded that the indictments violated due process of law in that the child neglect statute informed individuals that they might rely on spiritual healing and prayer without violating that statute, but did not state that doing so might expose them to other criminal charges if the treatment failed.

On appeal by the state, the court of appeals concluded that while the child neglect and second degree manslaughter statutes were not *in pari materia*, the trial court was correct to dismiss the indictments as violations of due process. The court reasoned that the child neglect statute did not provide fair notice of potential liability under other criminal statutes, that it permitted arbitrary enforcement, that the McKowns may well have relied on the spiritual treatment and prayer exception to the child neglect statute in determining the course of their son's treatment, and that the state had not clearly enough defined when reliance on spiritual healing became criminal conduct.

The state appealed to this court for reinstatement of the indictments charging respondents with second degree manslaughter. It contends that the court of appeals was correct in concluding that the spiritual healing and prayer

exception to the child neglect statute does not apply to the second degree manslaughter statute because the two provisions are not *in pari materia.* It argues that both the trial court and the court of appeals were incorrect, however, in concluding that the indictments violate due process of law.

State v. McKown, —— N.W.2d —— (Minn. filed September 20, 1991), slip op. at 2-4.

The Minnesota Supreme Court, on September 20, 1991, affirmed, holding that the statutes are not *in pari materia* but, in applying federal standards, due process (fair notice) rights of the parents were violated by the manslaughter indictments. The State has filed its Petition for Certiorari.

REASONS FOR GRANTING THE WRIT

I. THE MINNESOTA SUPREME COURT HAS MISINTERPRETED FEDERAL STANDARDS OF DUE PROCESS SO AS TO PREVENT PROSECUTION OF PARENTS FOR THE DEATH OF THEIR CHILD WHERE THE PARENTS UTILIZED PRAYER RATHER THAN CONVENTIONAL MEDICAL CARE TO TREAT THE CHILD'S DIABETES.

The Minnesota Supreme Court, in affirming the Court of Appeals, held that the statutes are not *in pari materia*, *McKown*, slip op. at 5-8, and that "nothing in the language of either provision suggests they are so closely related as to require that they be interpreted in light of one another, and neither contains an explicit mandate to construe them together." *McKown*, slip op. at 6. The supreme court further held, however, that in interpreting federal standards of due process, the existence of both statutes results in a due process (fair notice) violation of Respondent's rights. This holding a) results from a serious misinterpretation of federal standards of due process and b) is contra to that of every other state appellate court which has considered this issue.

A. The decision in McKown has misinterpreted federal standards of due process.

In its holding, the Minnesota Supreme Court relied upon two decisions of this Court, *Cox v. Louisiana*, 379 U.S. 559 (1965) and *Raley v. Ohio*, 360 U.S. 423 (1959) which could not be more inapposite. In *Cox*, public officials personally and specifically gave the defendant permission to demonstrate across the street from a courthouse and then arrested him for doing so. *Cox*, 379 U.S. at 569-71. This Court noted:

> Thus, the highest police officials of the city, in the presence of the Sheriff and Mayor, in effect told the demonstrators that they could meet where they did, 101 feet from the courthouse steps, but could not meet closer to the courthouse. In effect, appellant was advised that a demonstration at the place it was held would not be one "near" the courthouse within the terms of [violating] the statute.

Id. at 571. Because of this permission, "[Defendant] therefore was still justified in his continued belief that because of the original official grant of permission he had a right to stay where he was for the few additional minutes required to conclude the meeting." *Id.* at 572.

This Court, *citing Raley supra*, held that:

> [A]fter the public officials acted as they did, to sustain appellant's later conviction for demonstrating where they told him he could 'would be to sanction an indefensible sort of entrapment by the State—convicting a citizen for exercising a privilege which the State had clearly told him was available to him.'

Id. at 571.

In *Raley*, defendants were convicted "for refusal to answer certain questions put to them at sessions of the 'Un-American Activities Commission' of the State of Ohio." *Raley*, 360 U.S. at 424. However, "the defendants were apprised by the commission at the time they were testifying that they had a right to refuse to answer questions which might incriminate them . . . ." *Id.* at 426. Indeed,

> the Chairman of the Commission, who clearly appeared to be the agent of the State in a position to give such assurances, apprised three of the appellants that the

> privilege in fact existed, and by his behavior toward the fourth obviously gave the same impression. Other members of the Commission and its counsel made statements which were totally inconsistent with any belief in the applicability of the immunity statute, and it is fair to characterize the whole conduct of the inquiry as to the four as identical with what it would have been if Ohio had had no immunity statute at all.

Id. at 437-38. This Court reversed the conviction because "here there were more than commands simply vague or even contradictory. There was actual misleading." *Id.* at 438.

The case at bar, with its absence of personal advice to Respondents, is neither *Cox* nor *Raley*; and it is certainly not *United States v. Colon-Ortiz*, 866 F.2d 6 (1st Cir. 1989), the remaining federal case relied upon by the Minnesota Supreme Court in *McKown*. In *Colon-Ortiz* a sentencing statute (Section 841(b)(1)(B)) contained one provision which allowed a court to consider either prison or a fine, with a sub-paragraph of the same statute stating that a prison term was mandatory.

The first circuit simply held that "This lack of clarity *on the face of Section 841(b)(1)(B)* constitutes a notice deficiency and raises serious due process concerns." *Colon-Ortiz*, 866 F.2d at 9 (emphasis added). Here, of course, there are two distinct statutes which the court in *McKown* had already held do not have to be interpreted "in light of each other."

In contrast to this reliance on inapplicable case law, other state courts have correctly relied on federal standards of due process to reject the very reasoning used by the Minnesota Supreme Court. For example, in *Walker v. Superior Court*, 253 Cal. Rptr. 1, 763 P.2d 852 (Cal. 1988), *reh'g denied*, (Cal. 1989), *cert. denied*, 109 S.Ct. 3186 (1989), the California

Supreme Court, after holding that its similar "prayer exception" did not apply to its manslaughter statute, stated as follows:

> Defendant contends . . . that the statutory scheme violates her right to fair notice . . .[and] argues in essence that the statutes issue "inexplicably contradictory commands" (*Raley v. Ohio* (1959) 360 U.S. 423, 438, 79 S.Ct. 1257, 1266, 3 L.Ed.2d 1344) and thus violate due process by precluding "an ordinary person [from] intelligently choos[ing], in advance, what course it is lawful for him to pursue." [*Connally v. General Construction Co.* (1926) 269 U.S. 385, 393, 46 S.Ct. 126, 128, 70 L.Ed. 322).

Walker, 763 P.2d at 872, and that the felony statutes

> provide no notice of the point at which lawful prayer treatment becomes unlawful, thus requiring her "at peril of life, liberty or property to speculate as to the meaning of penal statutes." (*Lanzetta v. New Jersey, supra*, 306 U.S. at p.453, 59 S.Ct. at p.619). She frames her argument in the form of a rhetorical question: "Is it lawful for a parent to rely solely on treatment by spiritual means through prayer for the care of his/her ill child during the first few days of sickness but not for the fourth or fifth day?"

Id. at 871-72. The *Walker* court rejected this due process and notice argument holding:

> Justice Holmes correctly answers: "[T]he law is full of instances were a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree . . . 'An act causing death may be murder, manslaughter, or misadventure according to the degree of danger attending it' by common experience

> in the circumstances known to the actor." (*Nash v. United States* (1913) 229 U.S. 373, 377, 33 S.Ct. 780, 781, 57 L.Ed. 1232; see also *Coates v. City of Cincinnati* (1971) 402 U.S. 611, 614, 91 S.Ct. 1686, 1688, 29 L.Ed.2d 214). *The "matter of degree" that persons relying on prayer treatment must estimate rightly is the point at which their course of conduct becomes criminally negligent. In terms of notice, due process requires no more.* (*Burg v. Municipal Court, supra,* 35 Cal.3d at p.270, 198 Cal. Rptr. 145, 673 P.2d 732).

Id. at 872 (emphasis added).

Unlike holdings such as that of the California Supreme Court in *Walker*, the Minnesota Supreme Court has seriously misinterpreted federal standards of due process in upholding the dismissal of the indictments in the instant case.

B. The decision of the Minnesota Supreme Court is contra to that of every other state appellate court which has considered this issue.

The decision of the California Supreme Court in *Walker, supra* is not the only decision to reject the "due process rationale" which the court in *McKown* based its decision upon. In the recent case of *Hermanson v. State*, 570 So. 2d 322 (Fla. Dist. Ct. App. 1990), the facts were similar to those in the case at bar:

> William and Christine Hermanson seek reversal of their convictions for felony child abuse and third degree murder in the death of their seven-year-old daughter, Amy. Amy died after a lingering illness of juvenile diabetes. During her illness, in lieu of conventional medical treatment, the Hermansons, who are members of the

> First Church of Christ, Scientist, in Sarasota, provided Amy with a course of spiritual treatment with the assistance of two Christian Science practitioners.

Hermanson, 570 So. 2d at 324. After holding that Florida's "spiritual treatment proviso" does not create an exemption from prosecution for "felony child abuse, third degree murder, or manslaughter" *Id.* at 331,[1] the court addressed defendant's contention that:

> a parent who relies on spiritual rather than medical treatment will never know beforehand when the line is crossed where they should stop relying on spiritual treatment alone and seek medical intervention. This contention forms the basis of their claim that their due process rights have been violated because the statutes containing the term "culpable negligence" do not give them sufficient notice of what behavior constitutes a criminal act and when that behavior occurs.

Id. at 332. The court in *Hermanson* held:

> This argument has been satisfactorily answered for us by a statement by Justice Oliver Wendell Holmes as cited and amplified in *Walker v. Superior Court*, the case which recently construed California statutes similar to our own [quotation *supra* from *Walker* omitted] . . . . *Similar to the court in Walker, we conclude that sections 827.04 and 782.07 comply with the requirements of due process.*

Id. (emphasis added).

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[1] On rehearing, the question of whether the spiritual treatment proviso is a defense to a felony child abuse prosecution was certified by the Court of Appeals to the Florida Supreme Court.

See also Hall v. State, 493 N.E.2d 433 (Ind. 1986) wherein the Indiana Supreme Court (after holding that "reckless homicide does not have a statutory defense excusing responsibility for a death," and "[p]rayer is not permitted as a defense when a caretaker engages in omissive conduct which results in the child's death" *Id.* at 435) failed to discern any due process issue in the "interplay" between the statutes, and specifically rejected the defendant's contention that "their 'reckless' conduct was brought within the realm of acceptable standards of conduct by this exercise of prayer in lieu of medical care" *Id.*

The decision in the case at bar thus stands as an anomaly: a decision which has misinterpreted federal standards of due process; and which, alone among the courts which have considered this issue, has ruled in such a way that defendants, indicted for manslaughter in the death of a child, will never have to stand trial for a fact finder to determine whether they are guilty.

II. THE MINNESOTA SUPREME COURT'S DECISION, WHICH UPHELD THE DISMISSAL OF MANSLAUGTER INDICTMENTS, HAS THE PRACTICAL EFFECT OF ALLOWING PARENTS' PRACTICE OF RELIGION TO SUPERSEDE A CHILD'S RIGHT TO LIFE.

Minn. Stat. §609.205 (1988) reads:

> [a] person who causes the death of another by any of the following means is guilty of manslaughter in the second degree and may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than $14,000, or both:
>
> (1) by the person's culpable negligence whereby the person creates an unreasonable risk, and consciously

> takes chances of causing death or great bodily harm to another * * *.

It is undisputed that a child is a person. "[C]hildren are 'persons' within the meaning of the Bill of Rights. We have so held over and over again." *Wisconsin v. Yoder*, 406 U.S. 205, 243 (1972) (dissenting opinion by Douglas J.) *citing inter alia Haley v. Ohio*, 332 U.S. 596 (1948); *In Re Gault*, 387 U.S. 1 (1967); *In Re Winship*, 379 U.S. 358 (1970).

It has also been undisputed (until the instant case), that parents' religious beliefs must give way when serious harm to a child would result from their exercise. This Court stated in *Prince v. Massachusetts*, 321 U.S. 158 (1944):

> The parent's conflict with the state over control of the child and his training is serious enough when only secular matters are concerned. It becomes the more so when an element of religious conviction enters. Against these sacred private interests, basic in a democracy, stand the interests of society to protect the welfare of children, and the state's assertion of authority to that end, made here in a manner conceded valid if only secular things were involved. The last is no mere corporate concern of official authority. It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens.

Id. at 165 and concluded: "The right to practice religion freely does not include liberty to expose the community or the child . . . to ill health or death." *Id.* at 166-67.

In *Wisconsin v. Yoder*, 406 U.S. 205 (1972) where Amish parents' religious beliefs dictated that their children not be

educated formally beyond the eighth grade, it was precisely because of the lack of harm to the Amish children that this Court allowed the parental religious beliefs to contravene the State's compulsory school attendance law of age 16. As this Court stated:

> *This case, of course, is not one in which any harm to the physical or mental health of the child* or to the public safety, peace, order, or welfare *has been demonstrated or may be properly inferred.*

Id. at 230 (emphasis added).

State appellate courts are in accord. In addition to *Walker, Hermanson,* and *Hall, supra, see e.g., Craig v. State,* 144 A.2d 684, 690 (Md. Ct. App. 1959):

> In prosecutions for the breach of a duty imposed by statute to furnish necessary medical aid to a minor child, the particular religious belief of the person charged with the offense constitutes no defense. He cannot, under the guise of religious conviction, disobey the laws of the land made for the protection of the health and safety of society. It has been said that statutes such as we just mentioned make it the duty of those charged with the care of a child to furnish medical aid to the child, regardless of their religious belief, as such statutes are directed at the acts and not the beliefs of individuals.

See also Commonwealth v. Barnhart, 497 A.2d 616, 624 (Pa. Super. 1985):

> Although his life hung in the balance, Justin Barnhart here had no voice in his parents' decision to rely on religious rather than medical help. Precisely because a child of two years and seven months cannot speak on his own behalf, the State has charged the parents with the

affirmative duty of providing medical care to protect that child's life. Faced with a condition which threatened their child's life, the parents had no choice but to seek medical help.

However, the decision in the case at bar (which essentially states that the child neglect statute and manslaughter statutes are not to be interpreted together, but maybe the McKowns interpreted them that way)[2] has the practical effect of elevating the religious beliefs of parents over a child's right to life. It has this effect, contrary to case law from this Court which specifically holds that a child's right to life and freedom from harm must outweigh the parents' religious beliefs if they conflict.

In affirming the dismissal of the indictments, the Minnesota Supreme Court has effectively undercut the power of the State to attempt to bring to trial those who may have breached their duty "to not expose a child to ill health or death." *Prince, supra.*

Petitioner requests that this Court grant the Petition for Certiorari and reverse the decision of the Minnesota Supreme Court.

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[2] A holding which the dissent correctly described as "[t]his novel proposition, that conduct which complies with the requirements of one statute complies with all other statutes absent notification to the contrary, is in my opinion nothing more than the rejected *in pari materia* argument garbed in the cloak of due process." *McKown*, slip op. at D-1 (dissenting opinion by Coyne, J.).

CONCLUSION

For the reasons discussed above, the State of Minnesota respectfully requests that the petition for a writ of certiorari to review the judgment of the Minnesota Supreme Court be granted.

Respectfully submitted,

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November 18, 1991

APPENDIX

APPENDIX A

STATE OF MINNESOTA
SUPREME COURT

CX-90-766
C1-90-767

Court of Appeals

Tomljanovich, J.
Dissenting, Coyne & Simonett, JJ.
Took No Part, Gardebring, J.

State of Minnesota, petitioner,

Appellant,

vs.

Kathleen Rita McKown, (CX-90-766)

Respondent,

William Lisle McKown, (C1-90-767)

Respondent,

Mario Victor Tosto,

Defendant.

Filed: September 20, 1991
Office of Appellate Courts

SYLLABUS

Indictment charging respondents with second degree manslaughter must be dismissed because the state officially advised respondents they would be permitted to rely on spiritual

treatment and prayer in the care of their child without sufficient notice that should those methods fail, they might face criminal charges.

Court of appeals affirmed and indictments dismissed.

Heard, considered, and decided by the court enbanc.

OPINION

TOMLJANOVICH, Justice.

On May 9, 1989, 11-year-old Ian Lundman died at his home in Independence, Minnesota.[1] Ian's death was apparently caused by diabetic ketoacidosis, a complication of diabetes mellitus. Ian was occasionally ill in the weeks preceding his death and became seriously ill two or three days before he died.

Kathleen McKown, Ian's mother, and William McKown, Ian's step-father, are Christian Scientists. In accord with their religious beliefs, Ian was treated with Christian Science spiritual healing methods throughout his final illness. He did not receive conventional medical care at any time during that illness.

In late September and early October, 1989, the Hennepin County Attorney presented evidence related to Ian Lundman's illness and death to the Hennepin County Grand Jury. The grand jurors heard testimony from medical doctors indicating that Ian's diabetes was apparently treatable through conventional medicine and that his condition probably could have been stabilized as late as two hours before he died. The jurors also heard testimony regarding the nature and practice of

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[1] The facts upon which the appealed indictments are based and upon which the district court dismissed those indictments are drawn from testimony delivered before a Hennepin County Grand Jury.

Christian Science healing, and regarding the specific healing methods used in treating Ian Lundman.

Following this testimony, the county attorney instructed the grand jury as to the definition of second degree manslaughter.[2] Having heard this instruction, two of the jurors asked, "Can you explain child neglect at all. Is there any sort of * * * statute that would apply?" The county attorney replied, "Well, I can read you the statute. There's a criminal, it's Minnesota Statute 609.378 * * *." He then read the entire child neglect statute aloud to the jurors, and asked, "Did that answer your question, ma'am?" The juror who posed the question responded, "Mm-hmm."[3] After deliberating, the

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[2] The county attorney relied primarily on the established jury instruction for second degree manslaughter, *see* 10 Minn. Dist. Judges Ass'n, *Minnesota Practice*, CRIMJIG 11.24 (3d ed. 1990), including the instructions defining "culpable negligence," and "recklessness."

[3] The child neglect provision read to the jurors is found at Minn. Stat. § 609.378 (1988):

> (a) A parent, legal guardian, or caretaker who wilfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and which deprivation substantially harms the child's physical or emotional health, * * * is guilty of neglect of a child and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both.
>
> * * *
>
> If a parent, guardian, or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment shall constitute "health care" as used in clause (a).

Id.

grand jury returned indictments charging both Kathleen and William McKown with second degree manslaughter.[4]

The McKowns moved the District Court for the Fourth Judicial District, the Honorable Eugene J. Farrell presiding, to dismiss the indictments against them for lack of probable cause, because the indictments violated due process of law and their rights to freely exercise their religious beliefs, and because the grand jury was improperly instructed with respect to the McKowns' duty of care. The district court dismissed the indictments. It concluded that the child neglect statute and the second degree manslaughter statute were *in pari materia*, such that the spiritual treatment and prayer exception to the child neglect statute also operated as a defense to the charge of second degree manslaughter. The court determined that the McKown's rights had been prejudiced because the grand jury was not instructed as to the effect of the spiritual healing and prayer exception. It also concluded that the indictments violated due process of law in that the child neglect statute informed individuals that they might rely on spiritual healing and prayer without violating that statute, but did not state that doing so might expose them to other criminal charges if the treatment failed.

On appeal by the state, the court of appeals concluded that while the child neglect and second degree manslaughter stat-

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[4] Minn. Stat. § 609.205 (1988) reads:

> [a] person who causes the death of another by any of the following means is guilty of manslaughter in the second degree and may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than $14,000, or both:
>
> (1) by the person's culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another * * *.

Id.

utes were not *in pari materia*, the trial court was correct to dismiss the indictments as violations of due process. The court reasoned that the child neglect statute did not provide fair notice of potential liability under other criminal statutes, that it permitted arbitrary enforcement, that the McKowns may well have relied on the spiritual treatment and prayer exception to the child neglect statute in determining the course of their son's treatment, and that the state had not clearly enough defined when reliance on spiritual healing became criminal conduct.

The state appealed to this court for reinstatement of the indictments charging respondents with second degree manslaughter. It contends that the court of appeals was correct in concluding that the spiritual healing and prayer exception to the child neglect statute does not apply to the second degree manslaughter statute because the two provisions are not *in pari materia*. It argues that both the trial court and the court of appeals were incorrect, however, in concluding that the indictments violate due process of law.

The trial court concluded that the child neglect statute and the second degree manslaughter statute are *in pari materia*, requiring that they be interpreted in light of one another. We disagree.

"Statutes 'in pari materia' are those relating to the same person or thing or having a common purpose." *Apple Valley Red-E-Mix, Inc. v. State*, 352 N.W.2d 402, 404 (Minn. 1984). Such statutes should be construed in light of one another. *See id.; Doe v. State Bd. of Medical Examiners*, 435 N.W.2d 45, 49 (Minn. 1989). In *Doe*, this court held that Minn. Stat. § 13.41, Subd. 4 (1986), governing all state licensing agencies, and Minn. Stat. § 147.01, Subd. 4 (1986), which applied specifically to the State Board of Medical Examiners, were indeed *in*

pari materia. The court therefore concluded that a general phrase in section 147.01 could be read to incorporate a similar, but more specific phrase in section 13.41. *See id.*[5]

Unlike the statutes at issue in *Doe*, the child neglect and second degree manslaughter statutes are not *in pari materia* and thus, the spiritual treatment and prayer exception to the former cannot be imported into the latter. The child neglect provision applies specifically to individuals with legal responsibility for a child who willfully neglect that responsibility and thereby cause the child substantial physical or emotional harm. The statute defining second degree manslaughter, however, permits the state to prosecute anyone who causes the death of another by exposing that person to an unreasonable risk of death or great bodily injury. The two statutes are therefore clearly based on separate and distinct purposes. Further, nothing in the language of either provision suggests they are so closely related as to require they be interpreted in light of one another, and neither contains an explicit mandate to construe them together. *See Apple Valley Red-E-Mix*, 352 N.W.2d at 406 (that two statutes have different purposes and that neither mentions the other is evidence that the two are not *in pari materia*).

In *State v. Bolsinger*, 221 Minn. 154, 21 N.W.2d 480 (1946), the appellant contended that a statute allowing the prosecution of an individual who took the life of another by operating

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[5] At issue in *Doe* was whether "final decision of the Board" as used in section 147.01 should be read in concert with "findings of fact, conclusions of law and specification of the final disciplinary action contained in the record of [a licensing agency disciplinary action]" as used in section 13.41. This court concluded that because the two provisions were founded on the same purpose—regulation of licensing agency procedure—"final decision" included findings, conclusions and final disposition. *See Doe*, 435 N.W.2d at 49.

a vehicle in a "reckless or grossly negligent manner," Minn. Stat. § 169.11 (1941), was unconstitutionally vague. This court disagreed, relying in part on the definitions assigned to "reckless" and "grossly negligent" in other contemporary homicide statutes. *See Bolsinger*, 221 Minn. at 156, 21 N.W.2d at 486. The court explained that this was appropriate because

> [t]he statute in question and those relating to homicide in force at the time of its enactment relate to one common subject matter, that of homicide. As such, they should be construed as constituting one systematic body [of] law. Each statute should be construed in the light of, with reference to, and in connection with the others. So construed, the statute in question should be fitted to the statutes in force at the time of its enactment and carried into effect conformably to them.

Id. at 162, 21 N.W.2d at 486. Thus, the words "reckless" and "grossly negligent" as used in section 169.11 carried the same meaning as they did in other, then-existing homicide statutes.

Respondents here suggest a significantly different application of the doctrine of *in pari materia*. First, they contend that "culpable negligence" as used in the second degree manslaughter statute, adopted in 1963, should be defined in light of "neglect of a child" as used in section 609.378, enacted by the legislature in 1983. The statutory language at issue in *Bolsinger*, however, was construed in light of identical language in existing homicide provisions—the question was whether "reckless" and "grossly negligent" meant the same thing in the one statute as in the others. Second, respondents argue for interpreting the earlier of two statutes in light of the later, while in *Bolsinger* the court adopted precisely the opposite approach. Finally, the court in *Bolsinger* noted several times that the statute at issue and those considered *in par materia*

with it were all homicide statutes, "relate[d] to one common subject matter * * *." *Id.* Here the statutes do not appear to bear the same sort of common purpose. Therefore, application of the doctrine of *in pari materia* in this case is neither necessary nor appropriate.

Respondent also contends that the legislative history underlying the spiritual treatment and prayer exception establishes that it was intended to exempt those who rely on such treatment methods from *all* criminal prosecution related to their reliance on spiritual treatment and prayer in caring for their children. Although legislative history may be useful in interpreting an ambiguous statute, this court generally does not consider it when faced with a clearly worded provision. *See Handle With Care, Inc. v. Dept. of Human Services*, 406 N.W.2d 518, 522 (Minn. 1987); *Moleburg v. Marsden*, 294 Minn. 493, 494, 200 N.W.2d 298, 299 (1972) (where language of statute is clear, it defines legislative intent leaving no room for further judicial interpretation). The language of the exception is not ambiguous; it expressly states that relying on spiritual treatment and prayer does not in itself constitute child neglect. *See* Minn. Stat. § 609.378 (a) (1988). Thus, we need not consult the exception's legislative history in our interpretation of it.[6]

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[6] Respondent correctly indicates that the legislative history underlying the spiritual treatment and prayer exception contains at least one statement suggesting one representative's intention to protect those who rely on such treatment methods from all prosecution. However, this court has noted that the legislative intent underlying a particular statute is not necessarily reflected in the recorded statements of a particular member and that such statements must "be treated with caution." *Handle With Care*, 406 N.W.2d at 522, 522 n. 8.

We therefore conclude that the child neglect statute and the second degree manslaughter statute are not *in pari materia*. The doctrine of *in pari materia* is simply an interpretive tool this court relies on in certain instances to determine the meaning of ambiguous statutory language. Because neither statute is ambiguously worded, we have no need of the doctrine in this instance. Further, because the statutes at issue are not so closely related in either language or purpose as to suggest that they ought be interpreted together, application of the doctrine here would be inappropriate.

II

Both the trial court and the court of appeals concluded the indictments issued against respondents violate the constitutional guarantee of due process of law. We agree.

The essence of respondents' argument is not that either the manslaughter statute or the child neglect statute is so vaguely worded as to make it unreasonably difficult to discern what conduct each prohibits. *See Kolender v. Lawson*, 461 U.S. 352, 357 (1983) (due process requires criminal statutes to define offenses clearly enough that ordinary people can determine what they prohibit). Rather, respondents contend the child neglect statute misled them in that it unequivocally stated they could, in good faith, select and depend upon spiritual means or prayer without further advising them that, should their chosen treatment method fail, they might face criminal charges beyond those provided in the child neglect statute itself. In short, respondents argue that the child neglect statute does not go far enough to provide reasonable notice of the potentially serious consequences of actually relying on the alternative treatment methods the statute itself clearly permits. Neither the United States Supreme Court nor this court

has directly addressed a similar due process claim.[7] In *United States v. Colon-Ortiz*, 866 F.2d 6 (1st Cir. 1989), *cert. denied*, 490 U.S. 1051 (1989), however, the United States Court of Appeals for the First Circuit relied on a due process rationale much like that suggested here by respondents.

In *Colon-Ortiz*, the appellant challenged a federal statute prohibiting the distribution of cocaine. That statute, 21 U.S.C. § 841(b)(1)(B), provides that a person convicted of violating it "shall be sentenced to a term of imprisonment * * *, a fine * * *, or both." It goes on to state that "the court shall not place on probation or suspend the sentence of any person sentenced under this [provision]. No person sentenced under this [provision] shall be eligible for parole during the term of imprisonment imposed * * * ." 21 U.S.C. § 841(b)(1)(B). Relying on this latter statement and on several remarks in the underlying legislative history clearly indicating the intention to impose mandatory prison sentences, the trial court concluded it was required to sentence the appellant to prison, despite the language in section 841 indicating that a court could choose to impose only a fine. *Colon-Ortiz*, 866 F.2d at 9-10.

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[7] Decisions addressing the issue of "fair notice" in the context of a due process challenge typically involve consideration of whether the language of a particular statute was sufficient to provide an individual charged with violating that statute fair notice of the potential criminality of her or his conduct. *See, e.g., State v. Newstrom*, 371 N.W.2d 525, 528 (Minn. 1985) (concluding that statute requiring non-public school teachers hold qualifications "essentially equivalent" to those of public school teachers was unconstitutionally vague). Appellant contends *Walker v. Superior Court*, 763 P.2d 852 (Cal. 1988), *Hermanson v. Florida*, 570 So.2d 322 (Fla. Dist. Ct. App. 1990), and *Hall v. State*, 493 N.E.2d 433 (Ind. 1986), support its position that the indictments do not violate due process. None of these decisions, however, substantively address the issue of fair notice as raised by respondents.

The First Circuit agreed with the appellant's contention that the statute did not provide fair notice conviction would necessarily result in the imposition of a prison sentence. It reasoned that

> [t]he person of ordinary intelligence * * * should not have to guess at the meaning of penalty provisions, or else those provisions are not sufficiently clear to satisfy due process concerns. It is not enough for the congressional intent to be apparent elsewhere if it is not apparent by examining the language of the statute. No amount of explicit reference in the legislative history of the statute can cure this deficiency.

Id. at 9. This concern that individuals be given unambiguous notice of the boundaries within which they must operate directly contravenes the state's contention that nothing in the spiritual treatment and prayer exception to the child neglect provision reasonably suggests immunity from all prosecution. The exception is broadly worded, stating that a parent may in good faith "select and depend upon" spiritual treatment and prayer, without indicating a point at which doing so will expose the parent to criminal liability.[8] The language of the

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[8] As the court of appeals indicated, at least one other state has attempted to avoid the problem presented in this case by statutorily establishing a point beyond which parents may not rely solely on spiritual means of treatment. Okla. Stat. Tit. 21, § 852 (1988), provides:

> Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child; provided, that medical care shall be provided where permanent physical damage could result to such child * * *.

exception therefore does not satisfy the fair notice requirement inherent to the concept of due process.

Further, the indictments issued against respondents violate the long-established rule that a government may not officially inform an individual that certain conduct is permitted and then prosecute the individual for engaging in that same conduct. *See Cox v. Louisiana*, 379 U.S. 559 (1965) (where police official informed protesters they could picket across the street from courthouse, state could not prosecute those protestors for violating a statute prohibiting demonstrations near courthouse); *Raley v. Ohio*, 360 U.S. 423 (1959) (state could not prosecute individuals for refusing to testify before legislative committee when committee members informed those individuals they could invoke state privilege against self-incrimination).

The spiritual treatment and prayer exception to the child neglect statute expressly provided respondents the right to "depend upon" Christian Science healing methods so long as they did so in good faith. Therefore the state may not now attempt to prosecute them for exercising that right. By virtue of this conclusion, we do not introduce the proposition that conduct complying with one statute *necessarily* complies with all other statutes absent explicit notice to the contrary. Further, we do not here conclude that the state could *never* prosecute an individual whose good faith reliance on spiritual methods of treatment results in the death of a child. Rather, we hold that in this particular instance, where the state has clearly expressed its intention to permit good faith reliance on spiritual treatment and prayer as an alternative to conven-

tional medical treatment, it cannot prosecute respondents for doing so without violating their rights to due process.[9]

We therefore conclude that the indictments issued against respondents, charging them with second degree manslaughter in the death of Ian Lundman, violate the constitutional guarantee of due process of law and must be dismissed.

Court of appeals affirmed and indictments dismissed.

GARDEBRING, J., took no part in the consideration or decision of this case.

COYNE, Justice (dissenting).

I respectfully dissent. I fully concur in the majority's determination that nothing in the language of either Minn. Stat. § 609.378 (1988), the child neglect statute, or Minn. Stat. § 609.205 (1988), setting out the crime of second degree manslaughter, suggests they are so closely related as to require them to be interpreted in the light of each other. Having determined that the two statutes, which have quite different purposes, should not be construed together, the majority goes on to hold that the indictments issued here failed to meet constitutional requirements of due process of law because the child neglect statute did not notify them that although depending on "spiritual means or prayer for treatment or care of disease or

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[9] The Church of Christ, Scientist, as amicus curiae, argues that prosecuting respondents for relying on Christian Science healing methods in the treatment of their son constitutes a violation of the right to freely exercise religious beliefs guaranteed by both the federal and state constitutions. Because of our disposition of this appeal, however, we need not address this issue.

Also participating as amicus curiae, the Minnesota Civil Liberties Union contends that the spiritual treatment and prayer exception violates the first amendment's prohibition against state-established religion. Although we find the MCLU's arguments persuasive, our disposition based on due process grounds makes it unnecessary for us to consider the establishment clause issue at this time.

remedial care of the child" constituted "health care" for purposes of the child neglect statute, that conduct might, under some circumstances, constitute unlawful conduct pursuant to some other statute. This novel proposition, that conduct which complies with the requirements of one statute complies with all other statutes absent notification to the contrary, is in my opinion nothing more than the rejected *in pari materia* argument garbed in the cloak of due process. Inasmuch as defendants do not complain that either the child neglect statute or the manslaughter statute is so vaguely worded that one cannot reasonably discern what conduct each prohibits, the due process argument necessarily depends on construing the two statutes together.

Moreover, the due process argument is defective not only because it depends on construing the two statutes together but also because it depends on misconstruction of a statute and because it rests on an unavailable defense to the charge of manslaughter.

As set forth in Minn. Stat. § 609.205(1) (1988), the offense of second degree culpably negligent manslaughter is "an offense that involves both the objective element of negligence and the subjective element of recklessness, * * * * " *State v. Grover*, 437 N.W.2d 60, 63 (Minn. 1989). In order to establish the objective element of negligence the state must prove "a gross deviation from the standard of care that a reasonable person would observe in the actor's situation." *State v. Zupetz*, 322 N.W.2d 730, 733 (Minn. 1982) [quoting 2 C. Torcia, *Wharton's Criminal Law* § 168 at 272 (14 ed. 1979)]. In order to establish the subjective element of recklessness the state must establish "an actual conscious disregard of the risk created by the conduct." *State v. Frost*, 342 N.W.2d 317, 320 (Minn. 1983).

Statutes of this type have regularly and uniformly withstood due process challenges. Indeed, in *State v. Grover*, 437 N.W.2d at 63-64, we upheld against a due process challenge a criminal statute containing only an objective element of negligence.[1] In doing this, we quoted Justice Oliver Wendell Holmes, Jr.'s response to a due process challenge to a criminal statute containing a negligence element: "[T]he law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree." *Id.* at 64 [quoting *Nash v. United States*, 229 U.S. 373, 377 (1913)].

One cannot be convicted of culpably negligent manslaughter simply because one has not "estimated rightly." It is not enough that one has estimated wrongly, even in a grossly deviant sense. The state must also establish that the defendant was aware of the risk created by his or her conduct and consciously disregarded that risk.

The statute on which defendants rely in support of their argument that their prosecution for culpably negligent manslaughter is barred is not the statute dealing with culpably negligent manslaughter, nor is it one of the statutes setting forth the defenses recognized by the legislature as being generally applicable in criminal prosecutions [*See, e.g.*, Minn. Stat. § 609.08 (1988) (duress)]. Rather, defendants rely on what they characterize as an exception to the statute which makes it a gross misdemeanor to willfully deprive a child of various enumerated necessities, including "health care," if the deprivation "substantially harms the child's physical or

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[1] Specifically, we upheld the child abuse reporting statute, Minn. Stat. § 626.556, subd. 6 (1986), subjecting certain professionals to misdemeanor liability if they know or have reason to believe a child is being abused and yet fail to report the suspected abuse.

emotional health." Minn. Stat. § 609.378 (1988). The relevant statutory language is this definition:

> If a parent, guardian or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment shall constitute "health care" as used in clause (a).

There is no reason to believe that the legislature intended this provision of the child neglect statute to have any effect on a parent's criminal liability for culpably negligent manslaughter. This definitional language does not "except" spiritual means and prayer from operation of the child neglect statute; it simply provides that a parent who "in good faith" selects and depends on spiritual means or prayer for treatment of his or her child is no more—nor less—subject to prosecution for gross misdemeanor child neglect than a parent who furnishes more conventional health care. Whatever kind of health care is selected, one who violates Minn. Stat. § 609.-205(1) (1988) has by definition not acted "in good faith" but has both (a) grossly deviated from the standard of care that a reasonable person would observe in the actor's situation and (b) although aware of the risk created by that deviation, callously or consciously disregarded the risk. Whatever kind of health care is selected, due process does not require notification that selection of and reliance on a course of conduct which appears to comply with the requirements of one statute may not meet the requirements of another.

If, for example, a parent selects conventional health care and engages a physician to treat a child, there is no basis for a prosecution for child neglect because the parent has provided necessary health care. If however, the parent who selects conventional health care knowingly engages a physician whose license has been suspended or revoked because of habitual

neglect of patients caused by drug addiction and if the child should die because of the physician's neglect, I think it highly unlikely that anyone would contend that the absence of a warning in the child neglect statute insulated the parent from a charge of manslaughter. Due process does not require notification that selection of a form of treatment acceptable under the child neglect statute does not eliminate all possible criminal responsibility.

Similarly, a parent who provides clothing of a child has not violated the child neglect statute because the parent has not willfully deprived his or her child of necessary clothing. If, however, the parent knowingly clothes the child in pajamas of flammable material with full knowledge that the child's siblings frequently cause fires by playing with matches, and the pajama-clad child is subsequently burned to death in a fire started by the child's brother, the absence of a warning in the child neglect statute could hardly be said to protect the parent from a charge of manslaughter.

I believe that an individual "should be able reasonably to rely upon a statute or other enactment under which his conduct would not be criminal." 1 W. LaFave & A. Scott, *Substantive Criminal Law* § 5.1(2) at 591 (1986). However, I reject the argument that that concept has any application here. In enacting Minn. Stat. § 609.378 (1988), the legislature did not in any way shield parents from prosecution for culpably negligent manslaughter under Minn. Stat. § 609.205(1) (1988). Any mistake by defendants based on the child neglect statute is a mistake of law, which is not recognized as a defense. 1 W. LaFave & A. Scott § 5.1(d).

This is not to say, however, that defendants' belief that prayer is a better cure than medicine is without relevance in a prosecution under Minn. Stat. § 609.205(1) (1988). As stated in 2 W. LaFave & A. Scott § 7.12(a) at 281-82 n.28:

> [I]t is no interference with one's freedom of religion to convict of manslaughter one who, for religious reasons, fails to call a doctor when to fail to do so constitutes criminal negligence. Yet an honest religious belief that prayer is a better cure than medicine, that Providence can heal better than doctors, might serve to negative the awareness of risk which is required for manslaughter in those states which use a subjective test of criminal negligence.

As I stated earlier, there is both an objective element and a subjective element to the offense of second degree culpably negligent manslaughter. Here a grand jury returned an indictment charging the defendants with second degree manslaughter, that is, the grand jury found probable cause to believe that the defendants' conduct met both the objective element (unreasonable risk) and subjective element (consciously disregarded a known risk) of the crime of second degree manslaughter. Nevertheless, the majority simply assumes the defendants acted in good faith. Without intending to address the wisdom of prosecuting these parents or to speak specifically to the various evidentiary issues that might arise at a trial of defendants, I assume as a general matter that a trial court would liberally admit evidence supporting defendants' claim that they acted in good faith in relying on prayer and spiritual means rather than seeking medical care. But in light of the action of the grand jury, whether or not the defendants were culpably negligent—that is, whether they created an unreasonable risk and if so, whether they lacked good faith and consciously disregarded a known risk—is in my opinion a jury question, not a question appropriately decided by this court at the pretrial stage on the basis of a mistaken interpretation of a statute.

SIMONETT, Justice (dissenting).

I join Justice Coyne's dissent.

APPENDIX B

STATE OF MINNESOTA
IN COURT OF APPEALS

CX-90-766
C1-90-767

Hennepin County Gardebring, Judge

Filed: October 16, 1990
Office of Appellate Courts

STATE OF MINNESOTA,

Appellant,

vs.

KATHLEEN RIGA McKOWN,

Respondent (CX-90-766),

WILLIAM LISLE McKOWN,

Respondent (C1-90-767),

MARIO VICTOR TOSTO,

Defendant.

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SYLLABUS

The due process fair notice requirements of the fourteenth amendment of the United States Constitution and the seventh amendment of the Minnesota Constitution are violated by the application of the second-degree manslaughter statute to the diabetes-related death of a child whose parents relied upon the "spiritual means or prayer" exemption in the child neglect statute.

Affirmed.

Considered and decided by Gardebring, Presiding Judge, Huspeni, Judge, and Davies, Judge.

OPINION

GARDEBRING, Judge

This is an appeal by the state from an order dismissing second-degree manslaughter indictments against respondents. We affirm.

FACTS

Ian Lundman, the 11-year-old son of respondent Kathleen McKown and the stepson of respondent William McKown, died at his home on May 9, 1989, of ketoacidosis diabetes. The McKowns are practicing Christian Scientists. Prior to his death, Ian was ill intermittently for several weeks, and became progressively worse the last three or four days prior to his death. Throughout his illness, the McKowns called upon the assistance of a Christian Science practitioner and a Christian Science nurse to care for him. No medical treatment was sought.

The McKowns were indicted for second-degree manslaughter. A motion to dismiss the indictment was filed asserting lack of probable cause, violation of due process, infringement

of first amendment rights, and misinstruction of the grand jury.[1]

The McKowns argued that the "spiritual means or prayer" exemption in the child neglect statute authorized their behavior and precluded the manslaughter charges against them, that no probable cause existed for the indictment, and that the application of the second-degree manslaughter statute to conduct specifically authorized by the state violated due process requirements of fair notice. The trial court agreed and issued an order dismissing the indictments.

The trial court found the child neglect statute and the manslaughter statute were *in pari materia,* that the legislative history of the "spiritual means or prayer" exemption indicated an intent to exempt from sanction parents who in good faith rely upon spiritual means or prayer, and that the grand jury was not properly instructed that the exemption established the applicable standard of care. Finally, the trial court found that the state's failure to provide notice of potentially criminal conduct violated federal and state due process standards of definiteness.

The state appealed from the order. We affirm based on the due process argument and decline to reach other constitutional issues.

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[1] Two amici curiae, the Minnesota Civil Liberties Union and the Church of Christ, Scientist, were granted permission to participate, and filed written memoranda on free exercise and establishment clause issues. The amici were granted leave to participate in this appeal, as well, and each raised substantially the same issue raised at the trial court level. Neither issue is before this court, since the trial court did not reach either the free exercise or establishment clause issues.

ISSUE

Do the statutory provisions of Minn. Stat. §§ 609.378 and 609.205(1) (1988) provide "inexplicably contradictory" definitions of prohibited behavior so as to violate due process requirements?

ANALYSIS

We note initially that the circumstances surrounding the tragic death of Ian Lundman are not likely to arise again. The Minnesota legislature has acted to greatly reduce the likelihood that a case such as Ian's would remain undetected in the future. Effective June 1, 1989, the legislature amended the maltreatment of minors reporting statute. Minn. Stat. § 626.556 (Supp. 1989). According to the amended statute, a practitioner of healing arts, like a Christian Science practitioner, must report to the proper authorities if lack of medical care may cause imminent and serious danger to the child's health. *Id.*

Once reported to child welfare authorities, an illness like Ian's could support a petition to the district court seeking an order for provision of orthodox medical treatment. Minn. Stat. § 626.556, subd. 10e(c) (Supp. 1989), and generally Minn. Stat. ch. 260 (1988).

We believe the new reporting requirement will help prevent future tragedies because it is the practice of good faith adherents to Christian Science to enlist the support of Christian Science nurses and practitioners in dealing with serious illness, and to cooperate fully with public health authorities. At the time of Ian's death, no such reporting requirement existed, and there was, therefore, no opportunity for child welfare authorities to intervene.

The circumstances surrounding Ian's death raise issues concerning the relationship between two provisions of the Minnesota criminal code.

The manslaughter statute, under which the McKowns were charged, provides:

> A person who causes the death of another by any of the following means is guilty of manslaughter in the second degree * * *:
>
> (1) by the person's culpable negligence whereby the person creates an unreasonable risk and consciously takes chances of causing death or great bodily harm to another * * *.

Minn. Stat. §609.205(1) (1988).

The child neglect statute provides:

> (a) A parent, legal guardian, or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age * * * and which deprivation substantially harms the child's physical or emotional health, * * * is guilty of neglect of a child * * *.
>
> If a parent, guardian or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment shall constitute "health care" as used in clause (a).

Minn. Stat. § 609.378 (1988).

I. Statutory Construction

The trial court concluded that the two statutes are *in pari materia*, and construed them together in finding that "spiritual means or prayer" fully stated the applicable standard of care under the manslaughter statute. In addition, the trial court concluded the "spiritual means or prayer" exemption applies to the manslaughter statute and is an absolute defense to criminal liability.

We are unwilling to interpret the two statutes as did the trial court, either to establish a new standard of care for manslaughter or to construe the "spiritual treatment or prayer" as providing a complete defense. The child neglect statute does not specifically refer to the manslaughter statute, and the "spiritual means or prayer" exemption within it refers to the definition of child neglect.

Although the scope of the manslaughter statute is far beyond that of the child neglect statute, its purpose is similar—to punish the gross negligence of a person who has a duty of care towards another. *Herbes v. Village of Holdingford*, 267 Minn. 75, 125 N.W.2d 426, 431 (1963). Statutes *in pari materia* are those relating to the same person or thing or having a common purpose. *Apple Valley Red-E-Mix, Inc. v. State, Dept. of Pub. Safety*, 352 N.W.2d 402, 404 (Minn. 1984). Nevertheless, acts of general negligence are not so plainly similar to acts of child neglect that the conclusion of *in pari materia* necessarily follows.

Case law is not definitive as to how to determine whether statutes are *in pari materia*, and the leading authority notes:

> The guiding principle, however, is that if it is *natural and reasonable* to think that the understanding of members of the legislature or persons to be affected by a statute, be influenced by another statute, then a court called upon to construe the act in question should also allow its understanding to be similarly influenced.

2A Sands, *Sutherland Statutory Construction*, § 51.03 at 468 (emphasis added). We conclude, particularly in light of ambiguous legislative history, that it is not "natural and reasonable" to presume the legislature believed the manslaughter statute would be influenced by enactment of the child neglect statute. We therefore do not find the two statutes to be *in pari materia*. Nonetheless, it is precisely the lack of clarity

in the relationship between the two statutes that leads to our conclusion that the McKowns' due process rights were violated.

II. Due Process

The doctrine that the state must clearly define that behavior for which it proposes to exact a penalty is well-recognized, and can be said, at this point, to be incontrovertible.[2] This "fair notice" requirement, expressed, means that

> a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.

Connally v. General Const. Co., 269 U.S. 385, 391, 46 S.Ct. 126, 127 (1926). Further, where a statute imposes criminal penalties, a higher standard of certainty of meaning is required. *State v. Newstrom*, 371 N.W.2d 525, 528 (Minn. 1985).

The requirement of clear definition is directed both to actual notice to ordinary people of what conduct is prohibited and to the elimination of arbitrary and discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858 (1983). It is also sometimes expressed as a kind of reliance argument, prohibiting

> the most indefensible sort of entrapment by the State—convicting a citizen for exercising a privilege which the State clearly had told him was available to him.

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[2] While modern case law on this issue is grounded almost exclusively on the fourteenth amendment of the United States Constitution and parallel amendments in state constitutions, *e.g.*, Minn. Const. art. I, § 7, other bases clearly exist. In some instances, the Supreme Court has relied upon the sixth amendment's requirement that the accused be informed of the nature and cause of the accusation. *See, e.g., United States v. L. Cohen Grocery Co.*, 255 U.S. 81, 41 S.Ct. 298 (1921).

Raley v. Ohio, 360 U.S. 423, 438, 79 S.Ct. 1257, 1266 (1959). In another similar case, *United States v. Cardiff*, 344 U.S. 174, 73 S.Ct. 189 (1952), the Supreme Court struck down a badly drafted statute which contained mutually contradictory directives.

A. Fair Notice

In this instance, there can be little question that the due process fair notice requirement has been violated. The criminal child neglect statute authorizes parents to choose "spiritual means or prayer" in response to illness without respect to the medical condition of the child. The manslaughter statute gives no notice of when its broad proscription might override the seemingly contradictory permission given by the child neglect statute to treat the child by such spiritual means.

Further, the child neglect statute is expressed in powerful terms, allowing the parents not only to "select" but also to "depend upon" spiritual means or prayer, with no warning or caveat that such dependence may be deemed criminal solely due to the outcome of the treatment. The legislature could, of course, have built into the statute such a limitation, as has the legislature of Oklahoma. That body, in its child neglect statute, has authorized parents to treat illness with spiritual means or prayer, except in those instances in which "permanent physical damage" could result to the child.[3]

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[3] The statute reads in pertinent part:

> Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child; *provided, that medical care shall be provided where permanent physical damage could result to such child* * * *.

Okla. Stat. Tit. 21, § 852 (1988) (emphasis added).

But the Minnesota legislature did not include such a limitation. Rather, by enacting "inexplicably contradictory commands," the legislature failed to give adequate notice to Christian Scientists as to its expectations with regard to treatment of their children. *See Raley*, 360 U.S. at 438, 79 S.Ct. at 1266. The interaction of the two statutes is such that no amount of care gives safety, and the parents are left to "divine prophetically" the outcome of their actions, a "gift that mankind does not possess," according to Justice Holmes in an early application of the void-for-vagueness doctrine. *International Harvester Co. v. Kentucky*, 234 U.S. 216, 223-24, 34 S.Ct. 853, 856 (1914).

Evidence of the difficulty facing the parents in understanding the meaning of these two statutes taken together can be seen in the inability of the prosecutor, noted by the trial court in its memorandum, to articulate for the grand jury their relationship, when specifically asked to do so. The Supreme Court, in another early case in this area, identified the confusion in the lower courts as evidence of the fatal vagueness in the statute in question. *United States v. L. Cohen Grocery Co.*, 255 U.S. 81, 89-90, 41 S.Ct. 298, 300 (1921). The confusion of the prosecutor seems to us a similar indication of the flaws in this statutory scheme.

B. Arbitrary Enforcement

Further, the statutory scheme creates the opportunity for the kind of arbitrary and discriminatory enforcement also prohibited by due process. *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162, 92 S.Ct. 839, 843 (1972). It is incredible to suggest that parents would be prosecuted under the manslaughter statute where the death of a child occurred in spite of the application of more orthodox medical treatment. Query: Would a parent be indicted where chemotherapy failed

to thwart childhood leukemia? Nevertheless, the state would have us conclude that the choice of spiritual treatment, which has been put on legal footing equal to that of orthodox medical care by the child neglect statute, can result in a manslaughter indictment, simply because of its outcome. That is unacceptably arbitrary, and a violation of due process.

C. Reliance

Our conclusion is further supported by the "reliance" cases in this area.

> Ordinarily, citizens may not be punished for actions undertaken in good faith reliance upon authoritative assurance that punishment will not attach. As this Court said in *Raley* [360 U.S. at 438, 79 S.Ct. at 1266], we may not convict "a citizen for exercising a privilege which the State clearly had told him was available to him."

United States v. Laub, 385 U.S. 475, 487, 87 S.Ct. 574, 581 (1967). It is not likely that a criminal will carefully consider the text of the law before he engages in criminal activity. *McBoyle v. United States*, 283 U.S. 25, 27, 51 S.Ct. 340, 341 (1931). The Supreme Court has said

> [w]e recognize that in a noncommercial context behavior as a general rule is not mapped out in advance on the basis of statutory language.

Smith v. Goguen, 415 U.S. 566, 574, 94 S.Ct. 1242, 1248 (1974) (footnote omitted).

This is not the case. Evidence before the trial court suggests that, due to the sensitive nature of this issue, many Christian Scientists, including the McKowns, were specifically aware of the statutory provisions relating to use of spiritual means and prayer. They may have indeed "mapped out" their behavior based upon the statute. While the cases in this area are more likely to involve reliance by the defendant on administrative

pronouncements, there is nothing inherent in the concept which would make it inapplicable to an argument of reliance on a specific statutory enactment. The state in this instance has attempted to take away with the one hand—by way of criminal prosecution—that which it apparently granted with the other hand, and upon which defendants relied. This it cannot do, and meet constitutional requirements.

We also note that a statute which impinges on constitutionally-protected rights is subjected to stricter scrutiny as to the adequacy of the notice it provides. *Smith*, 415 U.S. at 573, 94 S.Ct. at 1247. One commentator has called this "the creation of an insulating buffer zone of added protection at the peripheries of several of the Bill of Rights freedoms." Note, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U.Pa. L. Rev. 67, 75 (1960).

D. Lenity

We turn next to a related doctrine of criminal law, one not specifically grounded in the fourteenth amendment, but one which we believe buttresses and supports the due process argument. The Supreme Court has frequently concluded that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *United States v. Bass*, 404 U.S. 336, 347, 92 S.Ct. 515, 522 (1971).

> Application of the rule of lenity ensures that criminal statutes will provide fair warning concerning conduct considered illegal and strikes the appropriate balance between the legislature, the prosecutor, and the court in defining criminal liability.

Liparota v. United States, 471 U.S. 419, 427, 105 S.Ct. 2084, 2089 (1985). Lenity is particularly appropriate where, as here, the legislative history of a statute or, as in this case, the relationship between two statutory provisions is not

clear. While both appellants and respondents cite to particular portions of recorded legislative history as support for their respective arguments, the legislative history, taken as a whole is at best, ambiguous, and at worst, utterly contradictory.

> [W]hen choice has to be made between two readings of what conduct [the legislature] has made a crime, it is appropriate, before we choose the harsher alternative, to require that [the legislature] should have spoken in language that is clear and definite. We should not derive criminal outlawry from some ambiguous implication.

United States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 221-22, 73 S.Ct. 227, 229 (1952). We do not believe the legislature has spoken sufficiently clearly on this subject to uphold this indictment.

Finally, we note that this is not one of those cases identified by Justice Holmes when he said,

> [t]he law is full of instances where a man's fate depends on his estimating rightly, this is, as the jury subsequently estimates it, some matter of degree. If his judgment is wrong, not only may he incur a fine or short imprisonment, * * * he may incur the penalty of death.

Nash v. United States, 229 U.S. 373, 377, 33 S.Ct. 780, 781 (1913).

In this instance, Ian Lundman's parents had no reason to believe that they must engage in the kind of "estimating" Holmes describes. They had not been unequivocably put on notice that their conduct put them at risk, and indeed, may have specifically relied upon official pronouncements of the state that their treatment of Ian was legally authorized.

DECISION

The death of Ian Lundman was a tragedy, and we acknowledge the important state interest in the protection and nurturance of children. We find, however, that the manslaughter statute, as applied to these defendants, is unconstitutionally vague in light of the "spiritual means or prayer" exemption in the child neglect statute. Therefore, we affirm the trial court in dismissing the indictments.

Affirmed.

SANDRA GARDEBRING
9 October 1990

APPENDIX C

State of Minnesota
County of Hennepin

District Court
Fourth Judicial District

File Nos. 89052954 and 89058941

STATE OF MINNESOTA,

Plaintiff,

vs.

KATHLEEN RITA McKOWN, WILLIAM LISLE McKOWN, MARIO VICTOR TOSTO,

Defendants.

ORDER AND MEMORANDUM

The above-entitled matter came on for hearing on March 26-27, 1990 before the undersigned Judge of District Court pursuant to Defendants' motion to dismiss the indictments.

Robert J. Streitz, Assistant Hennepin County Attorney, appeared on behalf of the State; Peter Thompson, Esq., appeared on behalf of defendant Kathleen Rita McKown; Ronald J. Raich, Esq., appeared on behalf of defendant William Lisle McKown; Larry B. Leventhal, Esq., appeared on behalf of defendant Mario Victor Tosto; Terrence J. Fleming, Esq., appeared as amicus curiae of the Church of Christ, Scientist; and Peter M. Lancaster, Esq., appeared as amicus curiae on behalf of the Minnesota Civil Liberties Union.

On March 27, 1990, the State declared that it would not object to defendant Tosto's motion to dismiss. Accordingly, this Court granted defendant Tosto's motion to dismiss the indictment at that time.

Based upon the files, records and proceedings held herein, the Court makes the following:

ORDER

1) That the motions of defendants Kathleen McKown and William to dismiss the indictment are GRANTED.

2) That the attached memorandum be hereby incorporated herein by reference.

BY THE COURT:
EUGENE J. FARRELL
Judge of District Court

Dated: This 2nd day of April, 1990.

MEMORANDUM

The material facts in this matter are not in dispute. Ian Lundman, age 11, died in his home due to a complication of diabetes mellitus. Although there is some question about when the symptoms of Ian's illness first began to manifest themselves, it is clear that by Friday, May 5, 1989, Ian was ill and exhibiting symptoms consistent with diabetes. It is equally clear that those symptoms persisted and intensified until the time of Ian's death in the early morning hours of Tuesday, May 9, 1989.

Throughout the course of Ian's illness, he received no medical attention. Ian's mother, defendant Kathleen McKown, is a life-long Christian Scientist and she relied on spiritual rather than medical treatment to minister to Ian. There can be no question that she firmly adheres to the principles of the Christian Science religion and was in good faith practicing spiritual healing. Defendant William McKown, her husband and Ian's step-father, is also a Christian Scientist and was present throughout the course of Ian's illness, although he was sleeping in another room at the time of Ian's death.

On October 10, 1989, Mrs. McKown, her husband, William McKown, and Christian Science Practitioner Mario Tosto were charged with manslaughter in the second degree under Minn. Stat. Sec. 609.205(1) in an indictment returned by a Hennepin County Grand Jury. All defendants moved to dismiss the indictments and the indictment against Mario Tosto has since been dismissed with no objection from the State.

The remaining defendants argue that the indictment must be dismissed against them for several reasons. Defendants believe that Minn. Stat. Sec. 609.378, the child neglect statute, provides them with an absolute defense as a matter of law. They further contend that given the parameters of the child neglect statute, that to construe the manslaughter statute to allow criminal prosecution in this matter would violate their due process rights. Defendants also argue that there was no probable cause to support the indictment and in addition, defendant William McKown asserts that as a step-parent he had no legal duty to provide medical care to a step-child.

Minnesota Statute Section 609.205(1) provides in pertinent part:

> A person who causes the death of another by any of the following means is guilty of manslaughter in the second degree . . .
>
> (1) by the person's culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another.

"Culpable negligence" requires a showing of gross negligence plus recklessness in the form of an actual conscious disregard of the risk created by the grossly negligent conduct. *State v. Frost*, 342 N.W.2d 317, 320 (Minn. 1983); *State v. Zupetz*, 322

N.W.2d 730 (Minn. 1982); and *State v. Beilke*, 127 N.W.2d 516, 521 (Minn. 1964). Therefore, the indictment may stand only if it properly charges, and there is probable cause to believe, that defendants consciously created an unreasonable risk of harm by grossly negligent conduct. This court does not find there is probable cause to believe there was grossly negligent conduct in this case.

Minnesota Statute Section 609.378, which defines child neglect in the criminal code, specifically provides:

> If a parent, guardian, or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment or care is "health care" as used in clause (a).

This statute clearly sets forth the applicable standard of care to be used in this case. The State argues that the defendants are under a duty to provide medical treatment in life-threatening situations notwithstanding this statute. This court cannot agree. The manslaughter statute must be read in conjunction with the child neglect statute.

The State argues that the words "this treatment shall constitute 'health care' as used in clause (a)" is a proviso which explicitly limits the scope of the prayer exemption to the child neglect statute. The State relies on *Dahlberg v. Young*, 231 Minn. 60, 42 N.W.2d 570 (Minn. 1950), which dealt with a statute that contained a clause which read "for purposes of this chapter". The language in *Dahlberg* was clearly meant to limit application to that chapter. No such definitive language appears in the instant case.

To resolve whether two statutes should be read together, the court must determine if they are "in pari materia." Statutes

are said to be "in pari materia" when they relate to the same matter or subject even though one is specific and one general and even though they have not been enacted simultaneously and do not refer to each other expressly. *Carlton v. Weed*, 208 Minn. 342, 294 N.W. 370 (1940). Minn. Stat. Sec. 645.26. Minnesota Statutes Sections 609.375 and 609.205(1) must be considered to be 'in pari materia".

Both the child neglect statute and the involuntary manslaughter statute deal with criminal liability as a result of negligent behavior. The child neglect statute specifically addresses the subject of negligent behavior affecting children, while the involuntary manslaughter statute generally addresses the subject of negligent behavior as it affects children and adults. By the plain language of the two statutes it appears that they are "in pari materia".

However, the guiding principal for a court in determining whether the exception of one statute is applicable to another is the natural and reasonable understanding of members of the legislature or persons to be affected by the statute. 2A Sutherland, *Statutory Construction* 468 (4th ed. 1984). In determining the understanding of members of the legislature, this court has the ability to review the legislative history of the statutes to determine their effect. *Handle With Care v. Dept. of Human Services*, 406 N.W.2d 518 (Minn. 1987). The spiritual means exemption was presented to the House Judiciary Committee in the first part of 1983. The intention of the legislature is best stated by Representative Bishop who spoke in favor of the amendment on behalf of the House Judiciary Committee.

> I want to point out to the Committee that what we are really dealing with here now is whether or not to make a criminal statute, not whether or not to prohibit or to

> force medical care over the wishes of a parent. It seems to me that a parent who in good faith selects a spiritual means shouldn't be exposed to criminal treatment. It [the exemption] will not preclude in case of an emergency, the Court stepping in and ordering medical care over the objection of the parent. It will just prohibit that parent from being exposed to any criminal sanction.

Transcript of Legislative Hearing; House Judiciary Committee March 21, 1985.

The overall legislative scheme was designed to have the state intervene in the case of an emergency rather than punish the parents either with child neglect or "any criminal sanction". This intention was reconfirmed by an amendment to the child neglect statute, which took effect after the death of Ian McKown, to require reporting to the state when a life-threatening situation developed. The following exchange took place between members of the Senate Judiciary Committee after it was mentioned that a diabetic child died in Florida after medical treatment was denied:

> Senator Spear: I don't think we want to make a parent who belongs to a religious group and in good faith selects a spiritual means of treatment or care, I don't think we want to make that parent subject to criminal proceedings.
>
> Senator Peterson: Even though it means the death of their child?
>
> Senator Spear: Well, we have other provisions in this bill which make it clear that a child who is denied this kind of medical care, [sic] there can be a court order to remove this child from the care of the parent. But again exempting that parent from criminal proceedings. I think criminal proceedings for someone's religious beliefs, for sincerely held religious beliefs, run into some

> rather strong constitutional problems in our society, Senator Peterson.

Transcript of Senate Judiciary Hearing, April 24, 1989.

That State argues that the spiritual means exemption has no application when the child's injuries extend beyond substantial physical harm and result in death. This court can find no basis in the statute or the legislative record for such an interpretation. The statements in the House and the Senate prohibiting the parent from "any criminal sanction", and "exempting that parent from criminal proceedings", are both absolute.

The spiritual means exemption was proposed by the Christian Science Church. Their understanding was that they would be allowed to rely on spiritual means for health care without the threat of criminal reprisal once the exemption was passed. The natural and reasonable understanding of members of the legislature and persons to be affected by the spiritual means exemption was that no criminal proceedings would be brought regardless of result as long as they practiced their religion in good faith. Therefore, the State was in error in informing the Grand Jury that the standard of care was that of a "reasonably prudent man".

However, erroneous instructions given a Grand Jury . . . will not invalidate an indictment absent a showing of prejudice. *State v. Inthavong*, 402 N.W.2d 794 (Minn. 1987). The indictment is defective if it "does not substantially comply with the requirements prescribed by law to the prejudice of the substantial rights of the defendant. Minn.R.Crim.P. 17.06 subd. 2(2)(a). Prejudice will ordinarily be found only on those rare occasions where the Grand Jury instructions are so egregiously misleading or deficient that the fundamental integrity of the indictment process itself is compromised. *Inthavong* at 802.

This court finds that the failure to properly instruct the Grand Jury as to the proper standard of care substantially prejudiced the rights of the defendants by impinging on the independence and integrity of the Grand Jury system. The failure to properly instruct the Grand Jury as to the applicable standard of care requires this court to dismiss the indictments.

Additionally, this court believes that construing Minn. Stat. Sec. 609.205 to allow criminal prosecution of the defendants would violate their due process rights. Due process includes fair notice by the state to its citizens of potentially criminal conduct. *Kolender v. Lawson,* 461 U.S. 352, 367-8 (1983). A statute, in order to meet federal and state due process standards of definiteness must be such as not to leave "persons of common intelligence . . . to guess at the meaning of a statute nor differ as to its application." *State v. Newstrom,* 371 N.W.2d 525, 528 (Minn. 1985), quoting from *Connaly v. General Construction Co.,* 269 U.S. 385, 391 (1925).

A review of the transcript of the proceedings before the Grand Jury reveals that the Hennepin County Attorney's Office was unsure as to the application of the child neglect statute. Upon direct question by two separate jurors as to the applicability of the child neglect statute, the county attorney simply responded that it existed. The State must provide the Grand Jury with proper legal advice. *State v. Grose,* 387 N.W.2d 182 (Minn.App. 1986). The State's inability to clarify the application of the child neglect statute demonstrates even the State's uncertainty as to its coverage. Due process would at least require notice of the meaning of the applicable law on the day of indictment. The violation of defendants' due process rights requires this court to dismiss the indictments.

E.J.F.